

@))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2793 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SHAMJI RAMJI GOHIL

Versus

DEPUTY ENGINEER (O & M)

Appearance:

MR KH BHAYA for Petitioner

MR RC JANI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 07/03/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for setting aside a supplementary bill issued by the Gujarat Electricity Board and confirmed by the appellate committee.

Notice was issued on April 22, 1999 and it was made returnable on June 23, 1999. On December 13, 1999, learned Single Judge passed the following order :

"Heard the learned advocates for the respective parties. Learned advocate Mr. Bhaya appearing for the petitioner states that of the disputed bill of Rs. 40,000/-plus the petitioner has deposited the sum of Rs. 23,000/-. He seeks time. S.O. to 24./12.1999 on condition that the petitioner will deposit the remainder of the disputed bill amount on or before 23.12.1999. Compliance hereof shall be reported to this court on the next date i.e. 24.12.1999."

When the matter was called out for hearing, several contentions were raised by the learned advocate for the petitioner. It was submitted that the petitioner had bought additional machinery prior to issuance of supplementary bill and it was not correct to contend that it was an afterthought. The appellate authority, according to Mr. Bhaya, had committed an error of law in observing that new machinery was bought and brought only in June 1996. It was factually incorrect. Reliance was placed on certain bills and octroi receipts. He also submitted that no sufficient opportunity was afforded to the petitioner and he was not permitted to engage an advocate. Since questions raised before the appellate authority were technical in nature, he ought to have been permitted to represent his case through a counsel. It was argued that the inquiry should be independent and impartial and the action taken on basis of the report submitted by GEB was contrary to principles of natural justice and fair play. He, therefore, submitted that the matter requires to be remanded by setting aside the order passed by the appellate authority.

Mr.R.C.Jani , on the other hand, raised a preliminary objection that on December 13, 1999 ,a conditional, order was passed by this Court directing the petitioner to deposit particular amount. Since that order was not complied with, petition deserves to be dismissed without going into the merits of the matter.

On merits, he submitted that sufficient opportunity was afforded to the petitioner and considering the facts and circumstances and evidence on record, the appellate committee decided the matter partly allowing the appeal

and upholding the contention of the petitioner and the petitioner cannot make any grievance against such order. Regarding prayer to engage an advocate, he urged that the petitioner cannot insist that he should be permitted to represent his case through advocate. The statutory authority decided the matter after taking into consideration the evidence and there is no infirmity in it.

In the facts and circumstances, in my opinion, the petition deserves to be allowed partly. So far as right to engage an advocate is concerned, in my opinion, the petitioner has no such right. In fact, the proceedings are also not such that he could be permitted to represent his case through a counsel, the reason being that the question before the appellate authority was whether there was tampering with the meter or not. Such question has to be decided by the committee after hearing the parties. The first contention, therefore, has no substance and it has to be rejected.

Regarding machinery, however, from the evidence, it appears that some machinery was bought by the petitioner and was brought in March/ April 1996. There is material on record which, Mr. Bhaya states, was placed before the appellate committee. Though all these documents were before the appellate committee, they have not been considered by the committee in proper perspective. In the order of the appellate committee, it was observed that machinery was installed in June, 1996. In these circumstances, in my opinion, to that extent, the order is vulnerable and deserves to be set aside, by directing the appellate authority to decide the appeal afresh in accordance with law.

It was, however, stated by Mr. Jani that conditional interim order passed by this Court on December 13, 1999 has not been complied with. When asked, Mr. Bhaya stated that the petitioner was not in a position to pay the amount. In my view, when the order was passed, it has to be complied with. In the facts and circumstances, in my opinion, ends of justice will be met if the petitioner is granted some more time to comply with the said order. If the above order will be complied with by the petitioner by paying the amount to GEB, without prejudice to his contentions, on or before May 31, 2000, the order passed by me will operate and the appellate authority will decide the appeal on merits in the light of observations made by me hereinabove. If, on or before May 31, 2000, payment will not be made, the petition will stand dismissed and the order passed by the appellate

committee shall stand confirmed. Subject to the above observations, petition stands disposed of. No order as to costs.

--

parekh